

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

TRANSITO TRUJILLO,

Plaintiff,

vs.

No. CIV 02-1146 JB/LFG

BOARD OF EDUCATION OF THE  
ALBUQUERQUE PUBLIC SCHOOLS,  
JOSEPH VIGIL and SUSIE PECK, Albuquerque  
Public Schools Superintendents individually and  
in their official capacities; ANTHONY GRIEGO,  
Principal, Valley High School, individually and in  
his official capacity; BRUCE SMITH, Valley High  
School Assistant Principal, individually and in his  
official capacity; RONALD WILLIAMS, Director  
of Certified Staffing, Albuquerque Public Schools,  
individually and in his official capacity; and MARK  
MAYERSTEIN, Valley High School employee,  
individually and in his official capacity,

Defendants.

and

TRANSITO TRUJILLO,

Plaintiff,

vs.

No. CIV 03-1185 JB/LFG

BOARD OF EDUCATION OF THE  
ALBUQUERQUE PUBLIC SCHOOLS;  
MARK MAYERSTEIN, Senior ROTC  
Instructor, and ANTHONY GRIEGO,  
Valley High School Principal, in their  
official and Individual capacities,

Defendants.

### **MEMORANDUM OPINION AND ORDER**

**THIS MATTER** comes before the Court on the Motion for Withdrawal of Counsel, filed April 5, 2006 (Doc. 247). The primary issue is whether the Court should allow attorney Richard L. Alvidrez to withdraw as counsel for Defendant Mark Mayerstein because of alleged misrepresentations that his co-counsel made to the United States Court of Appeals for the Tenth Circuit. Because the issue related to the briefing in the Tenth Circuit is now largely, or completely moot, because there is no evidence that Mr. Alvidrez' co-counsel made any misrepresentations, and because there is no sound reason not to let Mr. Alvidrez withdraw, the court will grant his motion.

### **PROCEDURAL BACKGROUND**

Mr. Alvidrez is counsel of record for Mayerstein. Mr. Alvidrez, along with two other counsel from Keleher & McLeod, P.A. – Sean Olivas and Melanie L. Frassanito – have represented Mayerstein in this action. Mr. Alvidrez represents that he departed the law firm of Keleher & McLeod, P.A., effective March 15, 2006, to continue his practice at another law firm in Albuquerque, New Mexico. See Motion for Withdrawal at 1.

An appeal has arisen out of this action. See Notice of Appeal, filed September 26, 2005 (Doc. 212). According to Plaintiff Transito Trujillo, on February 17, 2006, the Tenth Circuit issued an order stating: “Briefing on the merits shall proceed in accordance with the schedule set fourth [sic] in the Tenth Circuit Rules.” Response at 1, filed April 6, 2006 (Doc. 248). Trujillo contends that, on March 10, 2006, Mr. Olivas and Ms. Frassanito – as an excuse to obtain a thirty-day extension to file a Brief in Chief – represented to the Tenth Circuit that Mr. Alvidrez was no longer representing Mayerstein. See id. Trujillo states that he opposed Mr. Olivas' Motion for Extension because Mr. Alvidrez is Mayerstein's counsel of record and because Trujillo believes Mr. Alvidrez is obligated to

participate in the timely filing of the Brief in Chief. See id. at 2. Mr. Alvidrez states that the Tenth Circuit granted an extension until April 26, 2006. See Reply at 2, filed April 18, 2006 (Doc. 250).

Because of his departure from the law firm of Keleher & McLeod, P.A., Mr. Alvidrez requests that the Court consent to his withdrawal as counsel of record. See Motion for Withdrawal at 2. Keleher & McLeod, P.A. joins in this motion and asserts its continued representation of Mayerstein. See id. at 1.

Mayerstein does not object to Mr. Alvidrez' withdrawal. See id. at 2. Trujillo, who is plaintiff pro se, objects to Mr. Alvidrez' withdrawal. See Response at 1-2. Counsel for Defendants Albuquerque Public Schools, Board of Education, Joseph Vigil, Susie Peck, Bruce Smith, and Ronald Williams do not oppose this motion. See Motion for Withdrawal at 2. The Tenth Circuit has granted a similar motion filed in the proceedings before it. See Order Granting Motion for Withdrawal of Counsel at 1, filed April 17, 2006 (Doc. 249).

### **LAW REGARDING WITHDRAWAL OF COUNSEL**

The Court has wide discretion in granting or denying an attorney's motion to withdraw representation. See Abell v. Babbitt, No. 98-2315, 1999 U.S. App. LEXIS 7247, at \*5 (10th Cir. April 14, 1999)(quoting Washington v. Sherwin Real Estate, Inc., 694 F.2d 1081, 1087 (7th Cir. 1982)(“The grant or denial of an attorney's motion to withdraw in a civil case is a matter addressed to the discretion of the trial court and will be reversed on appeal only when the trial court has abused its discretion.”)).<sup>1</sup> The local civil rules provide that an attorney may file a contested motion to

---

<sup>1</sup> The Tenth Circuit Rule 36.3(B) states: “Citation to an unpublished decision is disfavored. But an unpublished decision may be cited to if: (i) it has persuasive value with respect to a material issue that has not been addressed in a published opinion; and (ii) it would assist the court in its disposition.” This unpublished decision meets both these criteria and the rules therefore allow citation to this unpublished decision.

withdraw, but “[t]he attorney must file and serve on all parties, including the client, a motion to withdraw. The attorney must give notice in the motion that objections must be served and filed within fourteen (14) calendar days from date of service of the motion and that failure to object within this time constitutes consent to grant the motion.” D.N.M.LR-Civ. 83.8(b).

### **ANALYSIS**

The Court grants the motion for withdrawal. The motion for withdrawal satisfies the procedural requirements of New Mexico’s Local Rules. The motion gives notice that objections must be served and filed within fourteen days from the date of service of the motion, and that failure to object within this time constitutes consent to grant the motion. See Motion for Withdrawal at 2.

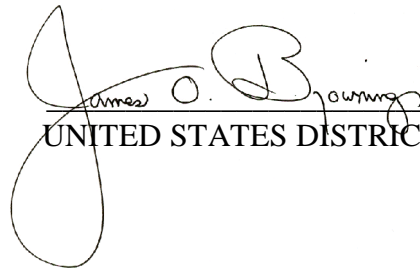
Furthermore, Mr Alvidrez’ reason for withdrawal – that he has left the firm of Keleher & McLeod, P.A. and is now working for another firm – is a reasonable one. Mr. Olivas and Ms. Frassanito will continue to represent Mayerstein’s interests in this matter, and there is no reason to believe that they will not do so in a capable manner. There is no reason not to let Mr. Alvidrez withdraw formally and immediately from this case.

Trujillo argues that, by granting the motion for withdrawal, the Court will be condoning attorney misrepresentations to the Tenth Circuit that Mayerstein’s counsel allegedly made. See Response at 1. Trujillo requests that the Court deny Mr. Alvidrez’ withdrawal until such time as he files the Brief in Chief with the Tenth Circuit. See id. Trujillo contends that there was ample time after February 17, 2006, for Mr. Alvidrez to submit the Brief in Chief and that, without valid justification, he failed to do so. See id. at 1-2. Trujillo contends that it is apparent that the motion for extension of time in the Court of Appeals was a delaying tactic on opposing counsel’s part. See id. at 2.

Trujillo appears to argue that, because Mr. Alvidrez had not been formally withdrawn as counsel of record in this action, the Court should require him to participate in the preparation of the Brief in Chief. This issue appears now to be moot because Mr. Alvidrez represents that the original deadline for filing the Brief in Chief has passed and the Tenth Circuit granted the requested extension to April 26, 2006. See Reply at 2.

Moreover, it does not appear that Mr. Olivas and Ms. Frassanito made any misrepresentations regarding Mr. Alvidrez' departure from the firm or his cessation of representation of Mayerstein. Mr. Alvidrez did in fact leave the firm and has ceased representing Mayerstein. See id. Mr. Alvidrez is now seeking the Court's formal approval of his withdrawal because of the cessation of his representation. See id. Because Mr. Alvidrez has provided a good reason to withdraw, and Trujillo has not offered a good reason to prevent his withdrawal, the Court will grant the motion for withdrawal.

**IT IS ORDERED** that the Motion for Withdrawal of Counsel is granted. The Court gives Richard L. Alvidrez its consent to his immediate withdrawal as counsel of record.

  
UNITED STATES DISTRICT JUDGE

*Counsel/Party Pro Se:*

Transito Trujillo  
Albuquerque, New Mexico

*Pro Se Plaintiff*

Max J. Madrid  
Alex C. Walker  
Modrall, Sperling, Roehl, Harris & Sisk  
Albuquerque, New Mexico

*Attorneys for Defendants Board of Education,  
Albuquerque Public Schools; Joseph Vigil;  
Susie Peck; Anthony Griego; Bruce Smith;  
and Ronald Williams*

Sean Olivas  
Melanie Frassanito  
Keleher & McLeod, P.A.  
Albuquerque, New Mexico

*Attorneys for Defendant Mark Mayerstein*

Richard L. Alvidrez  
Albuquerque, New Mexico

*Former Attorney for Defendant Mark Mayerstein*